

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42984
Docket No. MW-43072
18-3-NRAB-00003-150276**

The Third Division consisted of the regular members and in addition Referee Michael G. Whelan when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (former Burlington Northern
(Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Grinder Operators F. Fresquez and G. Hunt to perform Maintenance of Way Track Sub-department work (remove snow from switches and parking lots) at various locations in the Denver, Colorado area on January 27 and 28, 2014 instead of allowing Section Members S. Hodge and A. Slaughter to remain and perform such overtime work (System File C-14-J010-5/10-14-0153 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Hodge and A. Slaughter shall now each be compensated ‘... 11.5 hours over time and 7.5 hours double time at their respective rates of pay for this violation.’”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim concerns whether it was proper under the Agreement to permit Grinder Operators to perform snow removal on overtime. Claimants S. Hodge and A. Slaughter established and maintained seniority in the Carrier's Maintenance of Way and Structures Department and, at the time of this dispute, they were assigned to positions in the Track Sub-department and regularly assigned to a section gang.

The Organization alleges that on Monday, January 27, 2014, and continuing through Tuesday, January 28, 2014, the Carrier assigned Grinder Operators from the Welding Sub-department to clean snow and ice from switches at various locations on the Murray Hill Yard section territory. The Organization submitted a claim on behalf of the Claimants because it contends that it was a violation of the Agreement to assign Grinder Operators to do this work. Specifically, the Organization alleges that the Carrier violated Rule 1 Scope, Rule 2 Seniority Rights and Sub-Department Limits, Rule 5 Seniority Rosters, Rule 29 Overtime, Rule 30 Calls, Rule 55 Classification of Work, and Rule 78 Intra-Craft Work Dispute. As a remedy, the Organization seeks that the Claimants each be paid for 24 hours at their overtime rate.

The Carrier submits that the Rules cited by the Organization do not reserve snow removal work to Organization-represented employees, and to prevail on its claim, the Organization must establish that the disputed work has been exclusively performed by the Claimants on a system-wide basis. The Carrier argues that the Organization has failed to meet its burden to establish system-wide exclusivity of the work in question and that the Organization has failed to meet its burden of proof.

After careful review of the record, the Board finds that the evidence submitted by the Organization is insufficient to support its claim that the assignment of Grinder Operators to work overtime instead of the Claimants violated the Agreement. The Board bases its finding on prior arbitral decisions and the clear language of the Rules cited by the parties. The Board agrees with the Carrier's position that the assignment of the tasks here did not violate the

Agreement. The Organization has the burden of providing evidence that the Agreement was violated. Here, the evidence does not support a violation of the Rules cited by the Organization.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of February 2018.